IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 11695 of 2007(P)

PETITIONER:

V.SUBRAMANNIYAN,HOUSE NO.20/411,JUBILEE ROAD,THALASSERY.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS:

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1. THALASSERY MUNICIPALITY,REPRESENTED BY ITS SECRETARY,THALASSERY.

2. SECRETARY,THALASSERY MUNICIPALITY THALASSERY.

3. MUNICIPAL ENGINEER,TOWN PLANNING OFFICE, THALASSERY MUNICIPALITY.

BY ADV. SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 11695 OF 2007

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Dated this the 8th day of August, 2007

JUDGMENT

Citing the existence of the scheme which came into force in the year 1988 as per which it is proposed to have a road, the application submitted by the petitioner seeking permit stands rejected vide Ext.P2. Petitioner challenges Ext.P2. Petitioner relies on Ext.P1 judgment. He also refers to the judgment in W.P.(C)No.28206/06. Learned counsel for the petitioner submits that the matter is covered by the decision of the Division Bench in **Padmini v. State of Kerala** (1999(3)KLT 465).

2. I heard learned counsel for the respondent also. Second respondent has filed a detailed counter affidavit. Counsel for the respondents submits that there is a distinction in this case and the facts of Padmini's case. He also refers to Rule 12(1) of the Kerala Municipality Building Rules and also the definition of "road'.

Having heard counsel for the parties, the writ petition is disposed of as follows:

If the petitioner files an undertaking before the respondent-Municipality that in case acquisition proceedings are commenced during the validity of the scheme which is to expire on 26/05/2008, compensation need not be paid to the petitioner and petitioner will facilitate free surrender of the portion in question without demanding compensation, Ext.P2 shall stand set aside and the application of the petitioner for permit will be considered and appropriate decision will be taken in accordance with law within one month from the date of filing the undertaking. Even after the expiry of the scheme, it is made clear that it will be open to the respondent to proceed under the Land Acquisition Act, in which case compensation will have to be paid.

(K.M.JOSEPH, JUDGE)

sv.